Applicant Details

First Name	**McKenzie**
Last Name	**Deutsch**
Citizenship Status	**U. S. Citizen**
Email Address	**mldeutsch@ucdavis.edu**
Address	**Address** Street **750 Anderson Road** City **Davis** State/Territory **California** Zip **95616** Country **United States**
Contact Phone Number	**425-681-8058**

Applicant Education

BA/BS From	**Scripps College**
Date of BA/BS	**May 2019**
JD/LLB From	**University of California, Davis School of Law (King Hall)** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90502&yr=2011**
Date of JD/LLB	**May 11, 2024**
Class Rank	**5%**
Does the law school have a Law Review/Journal?	**Yes**
Law Review/ Journal	**No**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Seigenthaler Sutherland First Amendment Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Tang, Aaron
aatang@ucdavis.edu
Mesiwala, Shama
shama.mesiwala@jud.ca.gov
Callahan, Thomas
callahan.tom@gmail.com
Elmendorf, Christopher
cselmendorf@ucdavis.edu
530-752-5756

References

1. The Honorable James V. Selna of the U.S. District Court for the Central District of California
714-338-2841
James_Selna@cacd.uscourts.gov
Externship after first year of law school.

2. Michael Canzoneri
Supervising Deputy Attorney General in the Office of the Attorney General, California Department of Justice
916-990-5902
macanzoneri@ucdavis.edu
Moot court professor.

3. Jacqueline Concilla
Keker, Van Nest & Peters LLP
650-868-6528
jconcilla@keker.com
Supervising clerk during externship.

This applicant has certified that all data entered in this profile and any application documents are true and correct.

MCKENZIE DEUTSCH
750 Anderson Rd • Davis, CA 95616 • (425) 681-8058 • mldeutsch@ucdavis.edu

August 2023, 2023

The Honorable James O. Browning
United States District Court
District of New Mexico
333 Lomas Blvd NW, Suite 660
Albuquerque, New Mexico 87102

Dear Judge Browning:

I am a third-year student at the University of California, Davis Law School in the top five percent of my class. I write to apply for a 2025-2026 judicial clerkship with your chambers.

I am currently a member of the UC Davis Law Moot Court Honors Board and a research assistant to Professor Peter Lee. This summer, I am working at Gibson Dunn & Crutcher. My interest in clerking sparked last summer during my externship for U.S. District Court Judge James Selna, where I had the opportunity to write court orders for civil cases. I look forward to learning more about the judiciary as a full-time extern for Ninth Circuit Judge Margaret McKeown this coming fall. I would be honored to continue learning and contribute to a collegial environment as a law clerk in your chambers.

Enclosed are my resume, transcripts, letters of recommendation, and writing samples. My letters of recommendation are from Justice Shama Mesiwala, Professor Christopher Elmendorf, Professor Aaron Tang, and Thomas Callahan. Please let me know if I can provide any additional information. I can be reached by phone at 425-681-8058 or email at mldeutsch@ucdavis.edu. Thank you for your time and consideration.

Sincerely,

McKenzie Deutsch

MCKENZIE DEUTSCH

750 Anderson Rd • Davis, CA 95616 • (425) 681-8058 • mldeutsch@ucdavis.edu

EDUCATION

UC DAVIS, SCHOOL OF LAW, Candidate for J.D., May 2024
GPA: 3.922; Class Rank: Top 5%

- Dean's Merit Scholarship (awarded on a competitive basis for academic achievement and other indica of excellence)
- Academic Excellence Scholarship (awarded for outstanding academic record during first year of studies)
- Reynoso Academic Achievement Award (second highest grade in Copyright & Constitutional law; highest grade in Privacy, Technology, & the Law)
- Moot Court Honors Board, Spring Problem Writer & External Competition Team Member
- Neumiller Competition Winner (year-long Moot Court competition argued in front of panel of distinguished judges)
- Outstanding Oral Advocate Award (awarded for Appellate Advocacy Fall 2022 Competition)
- *Journal of International Law & Policy*, Research Editor & Blog Article ("Antitrust and Distrust")

SCRIPPS COLLEGE, B.A., *cum laude* in Politics with Honors, May 2019

- Dean's List (awarded for a semester GPA of 11.0/12.0 or better), 7 semesters
- Thesis: *Losing Liberty? The State of Jefferson Movement*
- Claremont-Mudd-Scripps Track & Field, Varsity Athlete & Student Athletic Advisory Committee Representative

EXPERIENCE

U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT, San Diego, California — Starting August 2023
Judicial Extern to Judge Margaret McKeown

GIBSON, DUNN & CRUTCHER LLP, Irvine, California — May 2023 – Present
Summer Associate

- Works on legal assignments: assisted with oral argument preparation for class action and expert report for patent matter

U.S. DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, Santa Ana, California — June 2022 – Aug. 2022
Judicial Extern to Judge James V. Selna

- Wrote 6 orders on motions filed by parties in civil cases; conducted legal research and writing

UC DAVIS, SCHOOL OF LAW, Davis, California — Dec. 2021 – Present
Research Assistant

- For Professor Peter Lee: conducts legal research and writing on project related to intellectual property and AI
- For Professor Aaron Tang: conducted research on SCOTUS decisions' impact on children; proofread book on SCOTUS
- For Professor Karima Bennoune: reviewed citations and wrote summary on South Africa apartheid included in paper draft

CROWDSENSE.AI, Tel Aviv, Israel — Jan. 2020 – June 2020
Product & Strategy Intern

- Aided in training machine learning; jump-started marketing by creating case studies and conducting market research

JOHNSON GRAFFE KEAY MONIZ & WICK LLP, Seattle, WA — July 2019 – Aug. 2019
Legal Intern

- Reviewed discovery materials; prepared summaries of witness testimony; conducted research on opposing parties and experts

WASHINGTON POLICY CENTER, Seattle, WA — June 2018 – Aug. 2018
Development Apprentice

- Created informational materials for publication; planned events with high-profile speakers like Secretary of Defense

OFFICE OF CHAIRWOMAN MCMORRIS RODGERS, Washington, D.C. — June 2017 – Aug. 2017
Congressional Intern

- Researched and drafted letters to constituents on current legislation; attended policy briefings; gave tours of Capitol

INTERESTS & VOLUNTEERING

- Horseback Riding (Hunters & Polo); Running; Hiking; Soccer (UC Davis Rec Champion); Reading Non-Fiction

African Refugee Development Center, Tel Aviv, Israel — Jan. 2020 – June 2020

- *Tutor:* Tutored adult refugee from Eritrea in English

Uncommon Good, Claremont, CA — Nov. 2016 – Jan. 2019

- *Tutor & Mentor:* Mentored and tutored low-income middle school student in English and math

UNOFFICIAL PAGE: 1

MCKENZIE L. DEUTSCH ID 920-278-624

PROFESSIONAL ACADEMIC RECORD

CURRENT COLLEGE(S): LAW
CURRENT MAJOR(S): LAW

ADMITTED: FALL SEMESTER 2021

INSTITUTION CREDIT:

FALL SEMESTER 2021

LAW	200	INTRODUCTION TO LAW	S	1.00	.00
LAW	202	CONTRACTS	A	4.00	16.00
LAW	203	CIVIL PROCEDURE	A-	5.00	18.50
LAW	206	CRIMINAL LAW	A+	3.00	12.00
LAW	207	RESEARCH & WRITING I	A	2.00	8.00

	COMPL	ATTM	PSSD	GPTS	GPA
TERM:	15.00	14.00	14.00	54.50	3.892
UC CUM:	15.00	14.00	14.00	54.50	3.892

SPRING SEMESTER 2022

LAW	200L	LAWYERING PROCESS LAB	S	.00	.00
LAW	200S	LAWYERING PROCESS	S	2.00	.00
LAW	201	PROPERTY	A	4.00	16.00
LAW	204	TORTS	A-	4.00	14.80
LAW	205	CONSTITUTIONAL LAW I	A+	4.00	16.00
LAW	208	LGL RESRCH & WRITING II	B+	2.00	6.60

	COMPL	ATTM	PSSD	GPTS	GPA
TERM:	16.00	14.00	14.00	53.40	3.814
UC CUM:	31.00	28.00	28.00	107.90	3.853

FALL SEMESTER 2022

LAW	215	BUSINESS ASSOCIATIONS	A	4.00	16.00
LAW	220	FEDERAL INCOME TAXATION	A+	4.00	16.00
LAW	241B	CAMPAIGN FINANCE	A	2.00	8.00
LAW	258A	LEGAL ETHICS	A+	3.00	12.00
LAW	410A	APPELLATE ADVOCACY I	S	2.00	.00

	COMPL	ATTM	PSSD	GPTS	GPA
TERM:	15.00	13.00	13.00	52.00	4.000
UC CUM:	46.00	41.00	41.00	159.90	3.900

SPRING SEMESTER 2023

LAW	209G	PRIVACY & TECHNOLOGY	A	2.00	8.00
LAW	219C	EVIDENCE	A+	4.00	16.00
LAW	235	ADMINISTRATIVE LAW	A	3.00	12.00
LAW	296	COPYRIGHT	A	3.00	12.00
LAW	410B	MOOT COURT	S	2.00	.00
LAW	413	INTRSCHL COMPETITN	S	2.00	.00

	COMPL	ATTM	PSSD	GPTS	GPA
TERM:	16.00	12.00	12.00	48.00	4.000
UC CUM:	62.00	53.00	53.00	207.90	3.922

FALL SEMESTER 2023

WORK IN PROGRESS:

LAW	218A	EQUAL PROTECTION	2.00
LAW	227A	CRIMINAL PROCEDURE	3.00
LAW	245	WHITE COLLAR CRIME	2.00
LAW	246	FEDERAL JURISDICTION	3.00
LAW	274B	TRADE SECRETS	2.00

IN PROGRESS CREDITS: 12.00

********** CONTINUED ON NEXT COLUMN **********

MCKENZIE L. DEUTSCH

CONTINUED

********** TRANSCRIPT TOTALS **********

TOTAL UNITS COMPLETED: 62.00 UC GPA: 3.922
UC BALANCE POINTS: 101.9

COMMENTS:
REYNOSO ACADEMIC ACHIEVEMENT AWARD - LAW 205
LAW WRITING REQUIREMENT SATISFIED - LAW 410B

********** MEMORANDA **********
UNIVERSITY REQUIREMENTS:

PREVIOUS DEGR:
BACHELOR OF ARTS 05/01/19
SCRIPPS COLLEGE

END OF RECORD
UNOFFICIAL UC DAVIS TRANSCRIPT COMPUTER PRODUCED ON 06/04/23 - ISSUED TO STUDENT.

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SCRIPPS COLLEGE

Office of the Registrar
Claremont, California 91711-3905
OFFICIAL ACADEMIC TRANSCRIPT

Name: McKenzie Loveland Deutsch
Birth (Mo/Da): 09/23
First Major: Politics

----------Transfer Credit Allowed----------
Total Transfer Credit from International Baccalaur

	0.00	3.00	3.00	0.00	0.000

	Attempted	Earned	GPA Courses	GPA Points	GPA
Sess	0.00	3.00	0.00	0.00	0.000
Cum	0.00	3.00	0.00	0.00	0.000

---------- Fall Term 2015 ----------

CORE001	SC	Histories of Present: Violence	1.00	A
PE 110	JP	Cross Country Team-M/W	0.25	P
POLI100	SC	Intro to International Relations	1.00	A
SPAN044	CM	Advanced Spanish: Culture & Soc	1.00	B+
WRIT050	SC	Bodies and Borders	1.00	A-

	Attempted	Earned	GPA Courses	GPA Points	GPA
Sess	4.25	4.25	4.00	45.00	11.250
Cum	4.25	7.25	4.00	45.00	11.250

---------- Spring Term 2016 ----------

ART 141	SC	Introduction to Digital Art	1.00	A
CORE002	SC	Invst Humor in Lit & Mass Media	1.00	A
POLI113	SC	People& Power Modern Middle East	1.00	A-
POLI140	SC	Intro to Political Theory	1.00	A

	Attempted	Earned	GPA Courses	GPA Points	GPA
Sess	4.00	4.00	4.00	45.00	11.250
Cum	8.25	11.25	8.00	90.00	11.250

---------- Summer Internship 2016 ----------

MS 198	SC	Independent Internship	0.50	P

	Attempted	Earned	GPA Courses	GPA Points	GPA
Sess	0.50	0.50	0.00	0.00	0.000
Cum	8.75	11.75	8.00	90.00	11.250

---------- Fall Term 2016 ----------

CORE003	SC	The Detective in the City	1.00	A
ECON052	PO	Principles: Microeconomics	1.00	P
HUM 195J	SC	Fellowship in Humanities Inst	1.00	A-
PE 002	PO	Pilates Method	0.25	P
PE 017	JP	Speed and Agility Class	0.25	P
PE 074	JP	Yoga-Power	0.25	P
POLI120	SC	Intro to American Politics	1.00	A

	Attempted	Earned	GPA Courses	GPA Points	GPA
Sess	4.75	4.75	3.00	35.00	11.666
Cum	13.50	16.50	11.00	125.00	11.363

---------- Spring Term 2017 ----------

ASTR002	PO	Intro to Galaxies & Cosmology	1.00	B
GOVT145E	CM	Security Studies	1.00	B+
GOVT168	CM	Black Intellectuals: Debate Race	1.00	A
PE 074	JP	Yoga-Power	0.00	W
PE 155	JP	Track & Field-Men/Women	0.00	P
POLI178	PO	Political Economy of Development	1.00	A

	Attempted	Earned	GPA Courses	GPA Points	GPA
Sess	4.00	4.00	4.00	43.00	10.750
Cum	17.50	20.50	15.00	168.00	11.200

---------- Fall Term 2017 ----------

DGHM150	CM	Digital Humanities Studio	1.00	A
GOVT055	CM	IntDS Research Methods in PolSci	1.00	B+
GOVT110	CM	American Culture Wars	1.00	A
HIST120E	CM	American Suburbia & Its Conseq	1.00	B+
PE 063	PO	Horseback Riding	0.00	P
PE 074	JP	Yoga-Power	0.00	P

	Attempted	Earned	GPA Courses	GPA Points	GPA
Sess	4.00	4.00	4.00	44.00	11.000
Cum	21.50	24.50	19.00	212.00	11.157

---------- Spring Term 2018 ----------

ENGL158	PO	Jane Austen	1.00	B+
GOVT100	CM	Public Policy Data Analysis/Lab	1.00	A-
GOVT101	CM	The United States Congress	1.00	A
GOVT123	CM	American Political Parties	1.00	A

	Attempted	Earned	GPA Courses	GPA Points	GPA
Sess	4.00	4.00	4.00	45.00	11.250
Cum	25.50	28.50	23.00	257.00	11.173

---------- (continued) ----------

Scripps College
1030 Columbia Avenue
Claremont, CA 91711

KELLY HOGENCAMP, REGISTRAR

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SCRIPPS COLLEGE

Office of the Registrar
Claremont, California 91711-3905

OFFICIAL ACADEMIC TRANSCRIPT

Name: McKenzie Loveland Deutsch

Fall Term 2018

GOVT128	JT	The University Blacklist	1.00	A-
MATH052	PZ	Introduction to Statistics	1.00	A-
PE 062B	JP	Volleyball-Adv	0.00	P
PE 069	PO	Soccer	0.00	P
POLI190	SC	Senior Seminar	1.00	A
POLI191	SC	Sr Thesis: Politics	1.00	A

	Attempted	Earned	GPA Courses	GPA Points	GPA
Sess	3.00	4.00	4.00	46.00	11.500
Cum	28.50	32.50	27.00	303.00	11.222

Spring Term 2019

FREN001	CM	Introductory French	1.00	A
GOVT117	CM	California Politics	1.00	B+
GOVT124A	CM	Richard Nixon	1.00	A
LEAD197	HM	Indep Study: Leadership Studies	1.00	A
PE 155	JP	Track & Field-Men/Women	0.00	P

	Attempted	Earned	GPA Courses	GPA Points	GPA
Sess	4.00	4.00	4.00	46.00	11.500
Cum	32.50	36.50	31.00	349.00	11.258

Scripps College
Degree Granted: Bachelor of Arts
Date Conferred: 05/18/19
Major(s): Politics

** Cum Laude
** Honors in Major

05/17/19
05/17/19

****************** End of Transcript ******************

Scripps College
1030 Columbia Avenue
Claremont, CA 91711

KELLY HOGENCAMP, REGISTRAR

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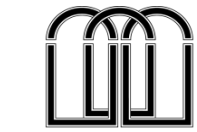

www.scrippscollege.edu

Office of the Registrar
1030 Columbia Avenue, PMB 2028
Claremont, CA 91711-3905
Phone: (909) 621-8273
Fax: (909) 607-9598
registrar@scrippscollege.edu

History and Accreditation: Founded in 1926 as an independent college for women, the second undergraduate college of The Claremont Colleges consortium, Scripps College is accredited by the Accrediting Commission for Senior Colleges and Universities of the **Western Association of Schools and Colleges**.

Academic Standing: Student is eligible to re-enroll unless otherwise noted. Students who earn a cumulative and/or semester GPA below 6.0 are placed on academic probation for the subsequent semester. Dismissals are noted on the transcript; suspensions are noted on the transcript during the period of suspension.

Calendar System:
The academic year is comprised of two 15-week semesters.

Grades and 12-point Scale:

12	11	10	9	8	7	6	5	4	3	0
A	A-	B+	B	B-	C+	C	C-	D+	D	F

I	Incomplete
IP	In Progress
AU	Audit
P	Pass (equivalent to C or higher)
F.	No credit earned in pass/fail courses (C- or below)
F^	No credit earned in pass/fail PE courses (C- or below)
W	Withdrawal (Post Fall 2002) after 8th week of the semester
WP	Withdrew Passing (Fall 1986-Fall 2002)
WF	Withdrew Failing (Fall 1986-Fall 2002)
N	Pending for 2 semester courses
NR	Not reported
NGS	No grade submitted

Repeating Courses: A student may repeat a course in which an F grade has been assigned, and courses specifically identified in the catalog that may be repeated for credit. All grades are included in the cumulative grade point average and appear on the student's transcript.

Credit: Each full course is equivalent to 4 semester or 6 quarter units of credit. Half and quarter courses are also offered.

Recording Attempted Courses: Courses dropped by the published drop deadline each semester are not displayed on the transcript.

Laboratory Courses: Courses with an L after the number include a laboratory experience.

Bachelor of Arts: A minimum of 32 courses with a 6.00 (C) grade point average cumulatively, in the major(s) and minor(s) is required for the bachelor of arts degree. Credit for physical education is limited to a total equivalent to one course. Prior to Fall 2002, cumulative courses were offered wherein two semesters of passing work were awarded one-half-course credit; second receives one-half-course credit (students enrolled before and after data systems conversion may have cumulative credit adjusted to quarter credit.)

Post-Baccalaureate Pre-Medical Program: The post-baccalaureate pre-medical program requires a minimum of 8 courses with a 9.00 (B) grade point average. The grade point average (but not credit) calculation restarts for students continuing enrollment beyond the bachelor's degree.

Resident Credit: This transcript includes courses completed at any of The Claremont Colleges while enrolled at Scripps College.

Credit for courses completed as part of an official Study Abroad Program while enrolled at Scripps are considered resident credit. Study Abroad courses completed prior to 1996 are not included into the Scripps cumulative GPA.

Courses prior to 1999 display leading numbers and prior to 2002 may display alpha suffixes necessary to system data conversion only, e.g., 5PSYC 52 SC is the same as PSYC052 SC; CORE002D SC is the same as CORE002 SC.

Transfer Credit: Transfer Credit is equated to Scripps courses in accordance with academic policy detailed in the applicable Scripps College catalog. Generally, credit will be granted for courses comparable to those offered by the undergraduate Claremont Colleges and presented with grades of C or higher on an official transcript from a comparable liberal arts college or university program. Prior to Fall 1996, individual courses accepted are listed with the units and grades granted by the transfer institution with Scripps course equivalency summarized; since Fall 1996 transfer credit is summarized only.

August 04, 2023

The Honorable James Browning
Pete V. Domenici United States Courthouse
333 Lomas Boulevard, N.W., Room 660
Albuquerque, NM 87102

Dear Judge Browning:

I write to express my strong support for McKenzie Deutsch, a 2L at the University of California, Davis School of Law (class of 2024) who is applying for a clerkship in your chambers. To lead with the conclusion, McKenzie is a truly outstanding student, one of the top handful of students in her class. And she possesses all of the crucial characteristics of a successful law clerk: she has a powerful mind, she is a clear writer, she shows remarkable attention to detail, and she is a kind and thoughtful person who lifts up others around her.

I base my recommendation for McKenzie on two main data points: her work as a student, and as a research assistant. Her classwork took the form of her performance in my Constitutional Law I class in the spring of her 1L year. She received one of only two A+'s that I awarded in the nearly 70-person course, and she earned the Cruz Reynoso award for outstanding achievement. Her grade was based on her performance on a midterm and final exam, both of which she excelled on. Particularly noteworthy were her essay responses, which struck me as well-organized and written especially under timed exam conditions: many students do not even finish their two essay responses in the allotted two hours; McKenzie not only finished, but wrote clearly and persuasively.

I also note that McKenzie excelled in class participation. Her responses during cold-call questioning reflected not only thorough preparation, but a person who listens closely and is not easily shaken. What is more, McKenzie also impressed me with the questions she asked during class and in office hours: she routinely picked up on the grayest areas of constitutional law and was able to engage with uncertain rules and doctrines in the most skillful of ways.

In large part because of her impressive work in my constitutional law class, I hired McKenzie to be a research assistant on two projects, one during the summer after her 1L year and a second during her fall semester of 2L. I was not disappointed: McKenzie approached both tasks with the same diligence she showed in class.

Her first research project involved the exercise of careful judgment in cleaning a data set for an empirical investigation of Supreme Court cases implicating children. A team of research assistants in prior years had helped me assemble a list of all Supreme Court cases implicating children's interests and then coded that data set along various dimensions, such as whether minors were parties to the case and whether minors were represented by the petitioner or respondent. Some of those variables were easy to code—for example, it's no mystery whether the cheerleader in Mahanoy Area School District v. B.L. was a party to the case when her name is in the caption (and as the respondent, clearly). But for other cases—especially older disputes from the 1960s and 1970s where primary case documents are not easy to find and case captions are often opaque—the task is not nearly as straightforward.

These complications meant that my initial team of research assistants were unable to put together a particularly consistent set of responses on these variables; many fields were left with question marks or complex answers rather than simple yes's and no's. My hope was for McKenzie to clean this data and thus limit the amount of individual investigation I would have to do myself, and her work exceeded expectations: McKenzie was able to track down responses to many coding questions earlier RA's could not answer in ways that I was easily able to double check (and find accurate) later on. She was truly one of the best RA's I've worked with on a project of this complexity. What is more, she did all of this even as she was working as a judicial extern over the summer —a pair of tasks that must have meant for some long hours. But through it all, she was consistently upbeat, responsive, and timely in her work.

The second task I asked McKenzie to perform was to proofread a book manuscript I had written. I actually hired two RA's to do the same proofreading simultaneously, and when the other RA (whom I also knew and respected from earlier assignments) completed the task, she found a page worth of catches and corrections—all of which I was so grateful to make. When McKenzie sent in her suggested proof edits, I expected a similar kind of list: maybe a page of obvious typos, some of which I imagined would overlap with the first RA's. What I got instead was remarkable: eight pages of carefully curated, thoughtfully presented suggestions that not only found all of the same mistakes that the other proof reader found, but that caught many, many more beyond. The attention to detail McKenzie displayed in this task was nothing short of tremendous (indeed, it was better work than the professionally hired proofreader that my publisher used).

For all of these reasons, I am happy to recommend McKenzie for a clerkship in your chambers without reservation. I should also mention that McKenzie has a wonderful personality and an easygoing nature. She is serious when necessary, but also with a sense of humor. In short, McKenzie is admired by her classmates and the faculty here, and I'm confident that she will contribute to a positive chambers environment.

Please do not hesitate to contact me if I may provide further information to assist in McKenzie application.

Sincerely,

Aaron Tang - aatang@ucdavis.edu

Aaron Tang
Professor of Law
UC-Davis School of Law
(203) 507-4715
aatang@ucdavis.edu

JUSTICE
SHAMA HAKIM MESIWALA

STATE OF CALIFORNIA
Court of Appeal
THIRD APPELLATE DISTRICT
914 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814

TELEPHONE: (916) 654-0199

April 26, 2023

Dear Judge:

With great joy, I recommend Ms. McKenzie Deutsch for a judicial clerkship because she possesses the skills to excel in your chambers -- a commanding grasp of legal research, writing, and analysis coupled with strong interpersonal skills. My recommendation is based on my professional interactions with McKenzie for the last school year.

McKenzie was part of the top scoring pair in my Appellate Advocacy class at UC Davis Law School this past year. She and her law school teammate won the spring intraschool moot court competition that took place a few weeks ago, beating out over 50 other students. And this past fall, she alone was the top oralist in my class. In observing McKenzie, what stands out is her ability to identify controlling legal issues, pinpoint the pertinent authorities that inform those issues, and explain in clear and concise terms why those authorities and a logical extension of those authorities compel a certain result.

In addition to McKenzie's excellent research, writing, and oration skills are her interpersonal skills, which I have observed in her capacity as an active participant in my year-long Appellate Advocacy class. The class is difficult substantively, and it's also a grind because it is in the evenings from 6 to 8 p.m. I stress class participation, which is difficult at that late hour. And McKenzie never disappointed. She raised her hand when she saw that I had no other volunteers and had thoughtful comments that moved the discussion along. I appreciated her approach to classroom participation because it gave others a chance to share their views first but advanced the class as a whole. In short, she has a strong intellect and work ethic, is a great collaborator, and has a warm demeanor.

With these skills, McKenzie will be an asset in chambers. Before becoming a judge and now a justice on the California Court of Appeal, I worked for 13 years as a judicial attorney for the California Court of Appeal. I have seen that the most successful law clerks are those who can grasp complex legal issues even when not easily identifiable, efficiently research applicable law, concisely explain how that law informs the legal issues, all with a pleasant disposition. McKenzie has these qualities.

Sincerely,

Shama Hakim Mesiwala
Justice, California Court of Appeal, Third Appellate District

August 04, 2023

The Honorable James Browning
Pete V. Domenici United States Courthouse
333 Lomas Boulevard, N.W., Room 660
Albuquerque, NM 87102

Dear Judge Browning:

I write to recommend McKenzie Deutsch for a clerkship in your chambers. I had the opportunity to work with McKenzie during the summer of 2022 when she was externing for Judge Selna. Despite the challenges inherent with learning a new writing style and confronting difficult legal issues, McKenzie thrived. I am confident that McKenzie's outgoing nature, warm personality, and enthusiasm for the work would make her an excellent clerk.

From her very first assignment, McKenzie's willingness to ask questions stood out to me. Not only was she working to internalize her own legal research and the guidance that Judge Selna and the clerks were providing, but she also asked questions that went beyond the scope of the immediate assignment. In addition to writing a satisfactory order, she wanted to understand the bigger picture: How did the motion that she was working on fit within the larger case? Why would a party seek a certain type of equitable relief? How did Judge Selna typically approach the exercise of discretion on a particular issue?

As McKenzie's supervisor, I found those conversations to be thoroughly engaging. She is a joy to talk to and a great co-worker who was always nice to have in chambers. She is bubbly, warm, and outgoing. She put effort into getting to know her co-workers and was eager to learn about how Judge Selna operated his courtroom. And beyond being enjoyable, those discussions were clearly productive.

McKenzie's growth was readily apparent, even in the short time that I had the privilege of working with her. Early on in her externship, I worked with McKenzie on a motion to dismiss in a products liability case. The motion appeared straightforward at first glance but presented numerous complications as she worked through the issues. At every stage she handled those challenges in a productive and professional manner: she discussed a plan of action with me or Judge Selna, threw herself into the legal research, and worked to find the answer. What truly set her apart was not the initial effort that she put into the assignment, but the work that she put in as multiple different paths of legal research led to a dead end. Unlike many externs and clerks, McKenzie was completely unfazed. As was typical for McKenzie, she peppered me with questions regarding next steps and why we were taking that new approach.

By the time McKenzie took on a more complex motion in a copyright case later that summer, she approached it with increased confidence and assertiveness. She had clearly internalized our discussions and was ready to take the lead. She identified new issues and worked collaboratively with the clerks and Judge Selna to identify the best to course of action. That willingness to seek out a broader understanding and problem solve will serve McKenzie well in any clerkship.

I am confident that McKenzie's inquisitive nature and innate drive would lead to exceptional growth over the course of a clerkship. With the additional knowledge and skills that she has gained since I worked with her, I am confident that she would be an effective clerk on day one and that she would excel in the role as the term progressed. In sum, I would be delighted to work with McKenzie again. I highly recommend that you consider her for a clerkship in your chambers.

Sincerely,

Tom Callahan
Former Law Clerk to the Honorable James V. Selna (2021-22)

June 12, 2023

Dear Judge:

It is my pleasure to recommend McKenzie Deutsch for the position of law clerk.

McKenzie has taken three of my courses during her time in law school—Property, Administrative Law, and my Campaign Finance Seminar—and I'm happy to report that she's a standout candidate. In each course, she earned a solid "A."

McKenzie is not a flashy or attention-grabbing student. In larger classes, she tends to keep quiet until called upon. But in my small, 11-student Campaign Finance Seminar, she was very lively, full of probing questions and thoughtful responses. Her writing samples also evince the diligence, care, and all-around competence one would expect to find a strong clerkship candidate.

There is only so much one can learn from a student's performance in the classroom and on exams about how they would perform as a law clerk, and I have not had the opportunity to supervise McKenzie on research paper or as a research assistant. But as you can see from her transcript, she has been a consistently excellent student (ranked in the top 5% of her class), and I have no reason to think she'd be anything other than a first-rate law clerk.

In sum, I recommend McKenzie very highly. If you have further questions about her application, please feel free to get in touch with me by email (cselmendorf@ucdavis.edu) or cell phone (415.385.5781).

Regards,

Christopher S. Elmendorf
Martin Luther King, Jr. Professor of Law

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WRITING SAMPLE

This writing sample is a court order prepared during my externship with Judge James Selna at the U.S. District Court for the Central District of California. The order considers a motion to dismiss for a copyright infringement claim. The "Legal Standard" portion contains standard language. The rest of the order consists of my own writing. Law clerks reviewed the order for accuracy and made some stylistic recommendations. A few of these recommendations are incorporated in the order. The Judge approved the order for publication.

Intent Drivers, Inc. v. Primesolarquotes et al.
SACV 22-cv-00003-JVS-JDE

TENTATIVE Order Regarding Motion to Dismiss

Defendants Primesolarquotes, Solarpanelquotes, and Sahak Nalbandyan ("Nalbandyan") (collectively "Defendants") filed a motion to dismiss Plaintiff Intent Drivers, Inc.'s complaint. Mot. Dkt. 12. Plaintiff Intent Drivers, Inc. ("Plaintiff") opposed the motion. Opp'n, Dkt. 15. Defendants replied. Reply, Dkt. 16.

For the following reasons, the Court **GRANTS** the motion to dismiss.

I. BACKGROUND

This dispute arises over Defendants' alleged copyright infringement of content owned by Plaintiff. The following allegations are taken from Plaintiff's complaint. See generally Compl., Dkt. 1.

Plaintiff is a California corporation based in Orange County, California. Id. ¶ 3. Plaintiff alleges that Primesolarquotes is a business entity of unknown form based in Glendale, California that operates the website primesolarquotes.com; Solarpanelquotes is a business entity of unknown form and location that operates the website solarpanelquotes.org; and Nalbandyan, who owns and operates Primesolarquotes and Solarpanelquotes, resides in Los Angeles, California. Id. ¶¶ 4–6.

Plaintiff is in the online lead-generating industry and produces its own visual and written content. Compl. ¶ 8. Such content includes the "Meter Photo" and the "Solar Article." Id. ¶¶ 9, 11; Compl., Ex. A at 10–12. Plaintiff alleges that Defendants displayed the Meter Photo and copied text from the Solar Article without authorization to divert sales from Plaintiff. Compl. ¶¶ 10–12. Plaintiff alleges that it owns the content used by Defendants, registered as "Energy Bill Cruncher 09_16_17" with the copyright registration number "TXu002234483." Id. ¶ 11; See Ex. A at 9. On January 3, 2022, Plaintiff filed suit against Defendants for copyright infringement.

II. LEGAL STANDARD

1. Personal Jurisdiction

Personal jurisdiction refers to a court's power to render a valid and enforceable judgment against a particular defendant. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291 (1980); Pennoyer v. Neff, 95 U.S. 714, 720, 24 L.Ed. 565 (1877), overruled in part by Shaffer v. Heitner, 433 U.S. 186, 206, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977). The contours of that power are shaped, in large part, by the Due Process Clause of the Fourteenth Amendment, which requires sufficient "contacts, ties, or relations" between the defendant and the forum state before "mak[ing] binding a judgment in personam against an individual or corporate defendant." Int'l Shoe Co. v. Washington, 326 U.S. 310, 319, 66 S.Ct. 154, 90 L.Ed. 95 (1945). Due Process requires that "there exist 'minimum contacts' between the defendant and the forum" in order to protect the defendant "against the burdens of litigating in a distant or inconvenient" court and lend "a degree of predictability to the legal system." World-Wide Volkswagen, 444 U.S. at 291, 292, 297, 100 S.Ct. 580.

Jurisdiction must also comport with law of the forum state. See Fed. R. Civ. P. 4(k)(1)(A); Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme, 433 F.3d 1199, 1205 (9th Cir. 2006) (en banc). Because California's long-arm statute allows the exercise of jurisdiction on any basis consistent with the state and federal constitutions, the jurisdictional analyses of state law and federal due process are the same. Cal. Code. Civ. Proc. § 410.10; see also Yahoo!, 433 F.3d at 1205.

Personal jurisdiction may be premised on general personal jurisdiction (based on a defendant's continuous presence in a state) or specific personal jurisdiction (based on specific contacts with the state specifically related to the claims at issue).

a. General Jurisdiction

General jurisdiction exists when a nonresident defendant's contacts "are so continuous and systematic as to render [it] essentially at home in the forum State." Daimler AG v. Bauman, 571 U.S. 117, 139, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014) (internal quotations omitted). A nonresident defendant's "continuous activity of some sorts within a state," however, is not enough by itself to support exercise of general jurisdiction. Goodyear Dunlop Tires Operations, S.A. v.

Brown, 564 U.S. 915, 927, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011). "Unless a defendant's contacts with a forum are so substantial, continuous, and systematic that the defendant can be deemed to be 'present' in that forum for all purposes," a forum may not exercise general jurisdiction. Yahoo!, 433 F.3d at 1205. Where general jurisdiction exists, the Court has jurisdiction over the defendant for all purposes, even in cases where the claims arise from dealings unrelated to those that establish jurisdiction. Daimler, 571 U.S. at 127, 134 S. Ct. 746.

b. Specific Jurisdiction

Specific jurisdiction exists when the suit "aris[es] out of or relate[s] to the defendant's contacts with the forum." Daimler at 127, 134 S. Ct. 746 (citation omitted). The Ninth Circuit employs a three-part test to determine whether a court possesses specific jurisdiction over a particular defendant: (1) the defendant must have "performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum"; (2) the claim must "arise[ ] out of or result[ ] from the defendant's forum-related activities"; and (3) the exercise of jurisdiction must be reasonable. Pebble Beach, 453 F.3d at 1155.

The plaintiff bears the burden on the first two prongs. Schwarzenegger, 374 F.3d at 802. If the plaintiff fails to satisfy either prong, "jurisdiction in the forum would deprive the defendant of due process of law." See Omeluk v. Langsten Slip & Batbyggeri A/S, 52 F.3d 267, 270 (9th Cir. 1995). "If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to 'present a compelling case' that the exercise of jurisdiction would not be reasonable." Schwarzenegger, 374 F.3d at 802 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476-78, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)).

2. Failure to State a Claim

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has "facial plausibility" if the plaintiff pleads facts that "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a Rule 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual

allegations as true, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. Most succinctly stated, a pleading must set forth allegations that have "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. Courts "'are not bound to accept as true a legal conclusion couched as a factual allegation.'" Id. (quoting Twombly, 550 U.S. at 555). "In keeping with these principles[,] a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." Iqbal, 556 U.S. at 679.

Second, assuming the veracity of well-pleaded factual allegations, the Court must "determine whether they plausibly give rise to an entitlement to relief." Id. at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id.

3. Motion to Strike

Under Rule 12(f), a party may move to strike from a pleading "an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). The grounds for a motion to strike must appear on the face of the pleading under attack, or from matters of which the court may take judicial notice. SEC v. Sands, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995). The essential function of a Rule 12(f) motion "is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983). "As a general proposition, motions to strike are regarded with disfavor because [they] are often used as delaying tactics, and because of the limited importance of pleadings in federal practice." Sands, 902 F. Supp. at 1165-66 (alteration in original) (internal quotation marks omitted).

III. DISCUSSION

Defendants move to dismiss Plaintiff's copyright infringement claim on the grounds that (1) Plaintiff has failed to show that it is the true owner of the copyright; (2) the Court lacks personal jurisdiction over Defendants; (3) Plaintiff fails to state a claim upon which relief can be granted; and (4) Plaintiff filed its opposition late. Mot. at 6; Reply at 2–3. Defendants also contend that Plaintiff's

Prayer for Relief is not properly pled. Mot. at 5. The Court considers each challenge in turn.

1. Late Filing of Opposition

As a preliminary matter, Defendants argue that Plaintiff failed to comply with Local Rule 7-9 by filing its opposition late, and thus, the Court should dismiss Plaintiff's claim under Local Rule 7-12. Id. Local Rule 7-9 requires parties to file opposing papers no later than twenty-one days before the scheduled hearing date. If parties fail to file required documents, the Court may view it as consent to granting or denial of the motion. L.R. 7-12. Here, Plaintiff filed its opposition only one day late, and Defendants do not explain how this is prejudicial. Defendants could have, but did not, request more time to file their reply. Further, Local Rule 7-12 is permissive, and the Court prefers to reach the merits. Thus, the Court declines to dismiss Plaintiff's claim on these grounds.

2. Copyright Ownership

Defendants argue that there is no subject matter jurisdiction over Plaintiff's claim because it fails to prove it is the true owner of the copyright, and thus, lacks standing. Mot. at 7. To bring a copyright infringement claim, Plaintiff must be the owner of a valid copyright. See 17 U.S.C. § 501(b); Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC, 139 S.Ct. 881, 887 (2019). However, the "registration requirement is a precondition to filing a claim that does not restrict a federal court's subject-matter jurisdiction." Reed Elsevier, Inc. v. Muchnick, 559 U.S. 154, 157 (2010). The issue of copyright ownership is relevant to statutory standing. Thus, the Court will consider this argument under Rule 12(b)(6), not Rule 12(b)(1). See Minden Pictures, Inc. v. John Wiley & Sons, Inc., 795 F.3d 997, 1001 (9th Cir. 2015).

Because Plaintiff provides a copyright registration, the Court finds that Plaintiff plausibly alleges ownership over the copyright at this stage. A copyright registration "constitute[s] prima facie evidence of the validity of the copyright and of the facts stated in the certificate." 17 U.S.C. § 410(c); see also S.O.S., Inc. v. Payday, Inc., 886 F.2d 1081, 1085 (9th Cir. 1989); Malibu Textiles, Inc. v. Label Lane Int'l, Inc., 922 F.3d 946, 951 (9th Cir. 2019) ("To plead ownership, [the plaintiff] must plausibly allege it owns a valid copyright registration for its work").

However, Defendants assert that Plaintiff's copyright is not valid; rather, they argue that the photographer hired by Plaintiff owns the copyright. Mot. at 8.

"In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author . . . unless the parties have expressly agreed otherwise" in signed writing. 17 U.S.C. § 201(b); see also Stillwater Ltd. v. Basilotta, No. 2:16-CV-01895-SK, 2020 WL 4355306, at *15–17 (C.D. Cal. Feb. 5, 2020). Here, the provided copyright registration lists "Intent Drivers, Inc., employer for hire" as the author. Ex. A at 9. Because there is no evidence of a written agreement suggesting otherwise, the presumption is that Plaintiff owns the copyright. Nevertheless, that the listed owner is in fact the true owner of a copyright is a rebuttable presumption. See Ets-Hokin v. Skyy Spirits, Inc., 225 F.3d 1068, 1075 (9th Cir. 2000). Defendant has not presented any evidence to rebut the presumption that Plaintiff owns the copyright at issue. Given that Plaintiff provides a copyright registration listing it as the author, the Court finds that Plaintiff has statutory standing to bring its copyright claim.

Accordingly, the Court **DENIES** Defendants' motion to dismiss for lack of copyright ownership.

3. Personal Jurisdiction

Defendants assert that the Court lacks personal jurisdiction over Plaintiff, claiming that none of the Defendants reside in California. Mot. at 8. Where a defendant grounds a motion to dismiss for lack of personal jurisdiction on written materials rather than an evidentiary hearing, "the plaintiff need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss." Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1223 (9th Cir. 2011). The Court must take allegations in a pleading as true unless contradicted by an affidavit and must resolve factual disputes in the plaintiff's favor. Schwarzenegger, 374 F.3d at 800; Pebble Beach, 453 F.3d at 1154 (9th Cir. 2006). Under this standard, the Court finds that Plaintiff's claim survives.

With respect to general jurisdiction, Plaintiff's counsel declares that he "reviewed extensive information showing that Defendants are most likely located in California." Decl. of Eric Bjorgum ("Bjorgum Decl."), Dkt. 15-1 ¶ 2. Defendants do not submit evidence demonstrating otherwise; instead, Defendants make the bare allegation that "none of the defendants reside in this district nor the State of California." Mot. at 11. This unsworn assertion is insufficient to overcome the presumption that the allegations in the pleading are true. Further, Plaintiff's counsel states Nalbandyan's wife claimed that Nalbandyan lives in Las Vegas, but that Plaintiff had no evidence to verify this and found evidence to the contrary. Bjorgum Decl. ¶¶ 2–4. In their reply, Defendants assert that this is admission to the

fact that Nalbandyan does not live in California. Reply at 7. However, the Court finds this unpersuasive. Defendants misconstrue Bjorgum's statements and do not provide any support for the claim that Nalbandyan lives in Las Vegas. Therefore, at this stage, the Court must assume it is true that Primesolarquotes and Nalbandyan are domiciled in California. However, Plaintiff alleges that Solarpanelquotes is of unknown origin, and thus, the Court cannot exercise general jurisdiction over Solarpanelquotes. See Compl. at 2.

Even if the Court lacked general jurisdiction, it has specific jurisdiction over Defendants. Defendants claim that because their websites are passive, they do not suffice for establishing personal jurisdiction. Mot. at 11–12. To satisfy the first prong of specific jurisdiction, the Court must find that Defendants purposefully availed themselves of the forum. Where a defendant purposefully directs activities and derives benefit from the forum (i.e., protection from the forum state's laws), the defendant has likely purposefully availed themselves of the forum. Burger King, 471 U.S. at 475–76 (1985). The Ninth Circuit has held that while maintenance of a passive websites does not satisfy the first prong of the specific jurisdiction analysis, "operating even a passive website in conjunction with 'something more'—conduct targeting the forum—is sufficient." Rio Properties, Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1020 (9th Cir. 2002) (finding that a passive website that targeted an individual plaintiff in the forum constituted "something more"); Mavrix Photo, Inc, 647 F.3d at 1229–1230 (9th Cir. 2011) (finding that a website's subject matter demonstrated anticipation and desire for viewers in the forum).

Here, Plaintiff provides Primesolarquotes's terms of use, which state that "all claims or causes of actions [ ] that may be based upon or arise out of or relate to the Terms, Privacy Policy, and your use of the Site, will be governed by California law" and the jurisdiction and venue for any such claims "will lie in the State and Federal courts located in the State of California, and you irrevocably agree to submit to the jurisdiction of such courts." Ex. D, Dkt. 15-2 at 17. Further, Primesolarquotes's privacy policy contains a special notice to California residents, but no notice to residents in other states. See id. at 14 (the "Privacy Policy" incorporated by reference). The Court finds that the choice of law and forum and privacy policy under Primesolarquotes's terms of use constitute "something more" and demonstrate specific targeting of California. Like Primesolarquotes, the Court finds that Solarpanelquotes has purposefully availed itself of the forum. Its choice of law and forum and privacy policy under its terms of use are expressly aimed at California (using nearly identical language as Primsesolarquotes's terms of use), require all claims to be resolved in California and give a special privacy notice to

California residents.[1] See Liberty Media Holdings, LLC v. Vinigay.com, No. CV-11-280-PHX-LOA, 2011 WL 7430062, at *7 (D. Ariz. Dec. 28, 2011), report and recommendation adopted, No. CV-11-280-PHX-SMM, 2012 WL 641579 (D. Ariz. Feb. 28, 2012) (finding that forum selection clause under defendant's website's terms of use conferred personal jurisdiction in the forum). Thus, Plaintiff has met its burden under the first prong of specific jurisdiction as to Primesolarquotes, Solarpanelquotes, and Nalbandyan, who Plaintiff alleges owns and operates Primesolarquotes.

As to the second prong, Plaintiff alleges that Defendants used its content without authorization, harming Plaintiff in the forum. Id. ¶ 17. The Court finds that this satisfies the second prong. See Mavrix Photo, Inc, 647 F.3d at 1228 (9th Cir. 2011) (second prong satisfied since the plaintiff's copyright infringement claim arose out of the defendant's publication of photos on website "accessible to users in the forum state"). Defendants do not make any arguments regarding reasonableness.

In sum, the Court finds that it has personal jurisdiction over Defendants. Accordingly, the Court **DENIES** Defendants' motion for lack of personal jurisdiction.

4. Failure to State a Claim

Last, Defendants assert that the Court should dismiss Plaintiff's claim because it fails to state a claim upon which relief can be granted. Mot. at 13. To state a claim for copyright infringement, a plaintiff must allege: "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991). The Court finds that Plaintiff has not sufficiently stated a claim for copyright infringement.

[1] The Court takes judicial notice of Defendant Solarpanelquotes's website, solarpanelquotes.org, for considering personal jurisdiction. See Fed. R. Evid. 201(b); W. Marine, Inc. v. Watercraft Superstore, Inc., No. C11-04459 HRL, 2012 WL 479677, at *10 (N.D. Cal. Feb. 14, 2012) ("Courts have taken notice of defendants' websites or characteristics thereof when determining personal jurisdiction").

First, while Plaintiff provides a copyright registration and registration number, it is unclear to the Court what content Plaintiff alleges is copyrighted and what content Plaintiff alleges has been infringed.

In its complaint, Plaintiff alleges that Defendant Primesolarquotes displayed the Meter Photo but does not specifically allege that it owns the copyright to the Meter Photo. Compl. ¶ 10. Plaintiff then alleges that Primesolarquotes "copied verbatim copyrighted text owned by Plaintiff (the 'Solar Article')," which Plaintiff alleges is registered as "Energy Bill Cruncher 09_16_17" with the registration number TXu002234483 and attached as Exhibit A. Id. ¶ 11. This suggests that Plaintiff owns a copyright to the Solar Article text, as shown in Exhibit A, but does not own a copyright to the Meter Photo. However, Plaintiff then contradicts these allegations: Plaintiff stipulates that it owns "the *photographic* work entitled 'Energy Bill Cruncher 09_16_17', which is *text* registered as U.S. Copyright Reg. No. TXu002234483" (emphasis added). Id. ¶ 16. Plaintiff also states that this photographic work is attached as Exhibit A, and "part of the text" is included in Exhibit A, contradicting its previous statement that the Solar Article text is attached as Exhibit A. Id. Additionally, while Plaintiff refers to Exhibit A as "part of the text" in its complaint, Plaintiff also refers to Exhibit A as a "deposit copy" accompanying the copyright registration in its opposition. Opp'n at 7. This leaves the Court uncertain as to what the registration and text provided in Exhibit A covers.

Furthermore, while Plaintiff alleges that Defendant Primesolarquotes copied text from the Solar Article without permission, it later alleges that Defendants infringed the "Work," without ever clarifying what the "Work" encompasses. See Compl. ¶¶ 11, 12, 17, 19. Plaintiff also submits Exhibit B with its complaint, but never explains what is shown in Exhibit B. See Compl., Ex. B at 14.

The Court finds further confusion due to the discrepancy between the registration date listed on the copyright registration, December 29, 2020, and the dated listed on the alleged deposit copy submitted by Plaintiff, January 4, 2022. See Ex. A at 9–10. While it is possible that a later published work may be the same as an earlier registered copyright, given the above-mentioned issues, it is unclear to the Court that Exhibit A is a deposit copy of the provided copyright.

Thus, Plaintiff's allegations do not make clear what is copyrighted, what is displayed in Exhibit A or Exhibit B, and what has been infringed. While there is not a heightened pleading standard for copyright infringement, and Plaintiff is only required to make "a short and plain statement of the claim showing that the pleader

is entitled to relief," the Court finds that Plaintiff does not state with sufficient clarity what it is alleging. Fed. R. Civ. P. 8(a)(2); See Synopsys, Inc. v. ATopTech, Inc., No. C 13-CV-02965 SC, 2013 WL 5770542, at *4 (N.D. Cal. Oct. 24, 2013) (failing to make clear what a defendant copied "makes it impossible" for courts to find a copyright infringement claim plausible); MultiCraft Imports, Inc. v. Mariposa USA, Inc., No. CV163975DMGAJWX, 2017 WL 5664996, at *3 (C.D. Cal. Sept. 14, 2017) (finding that plaintiff failed to allege "sufficient facts that show copying because it is not clear what works [were] at issue). Because Plaintiff does not provide enough facts and allege copyright infringement with sufficient clarity, the Court agrees with Defendants that Plaintiff's allegations are conclusory. Mot. at 6; see YellowCake, Inc. v. DashGo, Inc., No. 1:21-CV-0803 AWI BAM, 2022 WL 172934, at *7 (E.D. Cal. Jan. 19, 2022) ("Without further factual descriptions that give some examples and explain the acts of infringement, the allegations merely track the language of [17 U.S.C.A. § 106] and are thus, conclusory").

Second, the Court finds that Plaintiff has not made clear which allegations of infringement it is alleging against each Defendant. Pursuant to Rule 8, "[a] plaintiff who sues multiple defendants must allege the basis of [their] claim against each defendant" to show "what role each Defendant played in the alleged harm." Culinary Studios, Inc. v. Newsom, 517 F. Supp. 3d 1042, 1074 (E.D. Cal. 2021) (citing Inman v. Anderson, 294 F. Supp. 3d 908, 919 (N.D. Cal. 2018)).

Here, Plaintiff inconsistently alleges instances of infringement against Defendants, and fails to specify how Defendants infringed its copyright. As previously noted, Plaintiff alleges that Primesolarquotes displayed the Meter Photo and copied text from the Solar Article but does not explain how Primesolarquotes has done so and makes no specific allegations against Solarpanelquotes or Nalbandyan in the Complaint. Compl. ¶ 10–11. Plaintiff then asserts that "Defendant has been taking Plaintiff's content and using it to divert sales and leads" without specifying to which defendant it is referring. Id. ¶ 12. Last, Plaintiff alleges that Defendants "have copied and displayed the Work without Plaintiff's authorization," without defining how Defendants have done so or what copyrighted material the Work encompasses. Id. ¶ 16. Thus, the Court finds that Plaintiff's allegations do not provide Defendants fair notice of what the claims against them entail.

In sum, the Court finds that Plaintiff fails to sufficiently allege copyright infringement and **GRANTS** Defendants' motion for failure to state a claim.

5. Prayer for Relief

Defendants request that the Court strike (1)(ii)–(iv) under Plaintiff's Prayer for Relief. Mot. at 14–15; See Compl. at 5. In its opposition, Plaintiff concedes that there are unnecessary allegations in the Prayer for Relief. Opp'n at 7. Plaintiff has not alleged causes of action for interference with Plaintiff's contracts, interference with Plaintiff's prospective economic advantage, or negligent interference with Plaintiff's prospective economic advantage. Accordingly, the Court **STRIKES** the aforementioned prayers for relief.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** the motion to dismiss with leave to amend. If Plaintiff chooses to file an amended complaint curing the deficiencies explained above, it must do so within **30 days** of the entry of this order.

IT IS SO ORDERED.

The Court **VACATES** the August 1, 2022, hearing. Any party may file a request for hearing of no more than five pages no later than 5:00 p.m. on Tuesday, August 2, 2022, stating why oral argument is necessary. If no request is submitted, the matter will be deemed submitted on the papers and the tentative will become the order of the Court. If the request is granted, the Court will advise the parties when and how the hearing will be conducted.

MCKENZIE DEUTSCH
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WRITING SAMPLE

This writing sample is a portion of a brief I prepared for the 2023 Seigenthaler-Sutherland Cup National First Amendment Moot Court Competition. It argues that (1) the Physical Autonomy of Minors Act ("PAMA") is constitutional under the Free Exercise Clause of the First Amendment and (2) the Court should uphold the current test for evaluating free exercise claims. The brief uses *The Bluebook* citation format.

II. The Fifteenth Circuit correctly ruled that PAMA is neutral and generally applicable, and this Court should uphold *Smith*.

A. Under *Smith*, PAMA is neutral and generally applicable since it does not target the Church by its text or operation, extends to all minors, and contains no exemptions for secular conduct.

The Fifteenth Circuit correctly ruled that PAMA is neutral and generally applicable, and thus constitutional. In doing so, the Fifteenth Circuit correctly interpreted the Free Exercise Clause of the First Amendment in accordance with *Emp. Div., Dep't of Hum. Res. v. Smith*, 494 U.S. 872 (1990). Therefore, the Court did not err when it granted summary judgment on Petitioner's free exercise claim in favor of Respondent.

The Free Exercise Clause provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U.S. CONST., amend. I, XIV; *see Cantwell v. Connecticut,* 310 U.S. 296, 303 (1940). The Free Exercise Clause applies to the state of Delmont through the Fourteenth Amendment.

Smith sets forth the standard for evaluating laws that burden the free exercise of religion. In *Smith*, this Court held that "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" *Smith*, 494 U.S. at 879 (quoting United *States v. Lee*, 455 U.S. 252, 263 n. 3 (1982)). Such a law "need not be justified by compelling governmental interest" even if it burdens "a particular[] religious practice." *Smith*, 494 U.S. at 886 n.3. If a law is not neutral or generally applicable, strict scrutiny applies. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). Accordingly, the Fifteenth Circuit correctly concluded that since PAMA is neutral and generally applicable, the Church's blood banking practices do not excuse it from compliance with PAMA.

1. Neutrality

To assess neutrality, a court must first determine whether a law discriminates on its face: "[a] law lacks facial neutrality if it refers to a religious practice without a secular meaning discernable from the language or context." *Id.* at 534. Here, PAMA prohibits the procurement, donation, or harvesting of a minor's bodily organs, fluids, or tissue, regardless of profit or the minor's consent. R. at 24. Because PAMA extends to all minors and does not mention any religious group, or religion at all, it is facially neutral.

However, "facial neutrality is not determinative." *Lukumi*, 508 U.S. at 534. A court must look beyond a law's text. *See id.* One way to assess whether a law has a discriminatory objective is through its "operation." *Id.* at 535. If its application is adverse to a particular religion or religious practices, this impact may demonstrate impermissible targeting of that religion. *Id.* For example, in *Lukumi* this Court found that the operation of a set of city ordinances was discriminatory towards the Santeria Church's practice of animal sacrifice. *Id.* The ordinances prohibited animal killings for ceremonial purposes but contained carve-outs for nearly all other purposes, including food consumption, licensed food establishments, hunting, pest extermination, and euthanasia. *Id.* at 537. Therefore, this Court found that the ordinances had the effect of only suppressing the Santeria Church's ceremonial animal sacrifices. *Id.* at 536.

Here, PAMA does not have any similar discriminatory effect. While PAMA bars minors (and therefore minors in the Church) from donating blood, it does not entirely halt the Church's blood banking practices since all other members may still participate. Further, PAMA does not "single[] out" the Church's blood banking practices. *Id.* at 538. Instead, PAMA extends to all minors and makes no exceptions, in contrast to the ordinances in *Lukumi*. Last, PAMA applies not only to blood donations but also to the procurement, donation, and harvesting of bodily

organs and tissue. The fact that PAMA prohibits other conduct in addition to blood donations evidences that it was not enacted to specifically target the Church's blood banking practices.

Another way to assess a law's neutrality is through the additional factors outlined in *Lukumi*: "the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body." *Id.* at 540.

In *Lukumi*, this Court found the ordinances lacked neutrality because of events and statements prior to their implementation, i.e., the city had never expressed concern over or addressed animal sacrifice until the Santeria Church made plans to open in the city, and city meeting records revealed direct hostility towards the Santeria Church and its practice of animal sacrifice both by community members and city officials. *See id.* at 541–43.

Similarly, in *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, this Court found that the system of review under an anti-discrimination statute lacked neutrality. *See Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1730–32 (2018). The commission with authority to grant exemptions from complying with the statute was directly hostile towards a baker's religious beliefs, denying him an exemption while granting exemptions for secular bakers. *See id.*

Here, Petitioner contends that PAMA was enacted to target the Church following *The Beach Glass Gazette*'s story about its blood banking practices. R. at 24. Respondent respectfully acknowledges how PAMA might affect the Church's sincerely held beliefs and practices. However, the timeline of PAMA's passage following the *Gazette*'s story does not establish an

objective of suppressing Petitioner's religious practices. To the contrary, the facts establish otherwise:

1. Prior to the passage of PAMA there was a similar law in place which provided that minors under the age of sixteen could not consent to blood, organ, or tissue donations except for autologous donations in the case of medical emergencies for consanguineous relatives. R. at 5. This contrasts with *Lukumi*, where the city had never considered legislation about animal sacrifice until the Santeria Church made plans to open in its community. *See Lukumi*, 508 U.S. at 541–43. PAMA is nearly identical to its predecessor but no longer contains an exception for family emergencies. Thus, Petitioner cannot claim that PAMA's primary purpose is to suppress Petitioner's religion since it is merely a continuation of an already existing law.

2. The community was not upset about the Church's presence in Delmont (as in *Lukumi*) or religion at large (as in *Masterpiece Cakeshop*). Rather, the concern was about minors' ability to consent to obligatory blood donations. *See* R. at 23.

Likewise, Respondent's support for PAMA is part of her broader mission to protect the well-being of children. Girardeau Aff. at 4–6. When Respondent expressed her support for PAMA, the Delmont legislature had already drafted it. *Id.* at 3. Accordingly, the investigation into the Church's blood banking practices was part of PAMA's enforcement, and Respondent fulfilling her campaign promise to protect the children of Delmont.

3. There is no evidence in the record of a specific discriminatory intent by the legislature, or Respondent in her official role as governor, towards the Church before passing PAMA (in contrast to the repeated and disparaging remarks about religion in *Lukumi* and *Masterpiece Cakeshop*. *See Lukumi*, 508 U.S. at 451; *See Masterpiece Cakeshop*, 138 S. Ct. at 1729). Respondent acknowledges her comment about the Church after PAMA's enactment during her

campaign on January 28, 2022. *See* R. at 26. However, since it was made in the personal context of her running for office and not in her capacity as governor, it does not factor into PAMA's neutrality.

In summary, since PAMA is facially neutral, does not discriminate in its operation as to single out the Church, and was a continuation of a previous law to promote minors' safety, this Court should find that PAMA is neutral.

2. General Applicability

To satisfy general applicability, a law must not "consider the particular reasons for a person's conduct by providing 'a mechanism for individualized exemptions.'" *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021) (quoting *Smith*, 494 U.S. at 884). A law may also lack general applicability if "it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interest in a similar way." *Id.* at 1877. Further, neutrality and general applicability "are interrelated, and . . . failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Lukumi*, 508 U.S. at 531.

In *Lukumi*, this Court found that ordinances intended to prevent animal cruelty and protect public health were not generally applicable since the ordinances contained extensive exemptions for secular conduct but barred religious animal sacrifice. *See id.* at 544–46. Similarly, in *Fulton*, a city denied a religiously affiliated foster care agency a contract to continue operating because the agency refused to certify same-sex couples as foster parents on religious grounds. *Fulton*, 141 S. Ct. at 1878. In *Fulton* this Court concluded that the law at issue was not generally applicable since exemptions were made at a government official's discretion. *Id.*

Unlike the laws in *Lukumi* and *Fulton*, PAMA is not underinclusive. PAMA extends to all minors without exception. It does not distinguish between secular or religious blood donations by minors. It bars all such conduct. In addition to containing no enumerated exceptions, PAMA has no "mechanism" for the government to grant "individualized exceptions." *Id.* Thus, PAMA has no features that would undermine its objective to protect children. Further, PAMA's neutrality strongly indicates it is also generally applicable.

Additionally, Respondent emphasizes that the Fifteenth Circuit was correct that *Smith*'s analysis for "hybrid situation[s]" where a law implicates free exercise "in conjunction with other constitutional protections" does not apply. *Smith*, 494 U.S. at 881–82. Such a hybrid situation arose in *Wisconsin v. Yoder*. *See Wisconsin v. Yoder*, 406 U.S. 205 (1972). However, according to the Fifteenth Circuit, *Yoder* is inapplicable because the present case does not involve education.

Accordingly, this Court should affirm the Fifteenth Circuit's finding that PAMA is neutral and generally applicable. PAMA and Respondent's investigation into the legality of the Church's blood banking practices under PAMA are constitutional under the Free Exercise Clause of the First Amendment. While PAMA may incidentally burden the Church's blood banking practices, this does not excuse it from complying with PAMA.

B. This Court should uphold *Smith* based upon *stare decisis*.

Respondent maintains that *Smith* should be upheld by application of the doctrine of *stare decisis*. Courts turn to the *stare decisis* doctrine when evaluating precedent. *See, e.g.*, *Janus v. Am. Fed'n of State*, 138 S. Ct. 2448, 2478 (2018). Common considerations include whether the decision was well-reasoned, its workability, and its "consistency with other related decisions, developments since the decision was handed down, and reliance on the decision." *Id.* At 2478–

79. These considerations, along with *Smith*'s historical underpinnings, establish that *Smith* should be upheld.

1. *Smith*'s central contention that the right of free exercise does not excuse compliance with neutral laws of general applicability has long-standing roots in this Court's jurisprudence, dating from the 1878 decision *Reynolds v. United States* to the present.

Smith is not a "radical" departure from how courts evaluate free exercise claims. *See* R. at 35. The Fifteenth Circuit erroneously states that *Smith* has its roots in the 1940 decision, *Minersville School Dist. v. Gobitis*. *See id.* Rather, *Smith*'s contention that religious practice does not excuse compliance with otherwise valid laws dates to *Reynolds v. United States* in 1878. *See Smith* 494 U.S. at 879 (discussing *Reynolds v. United States*, 98 U.S. 145 (1878)). In *Reynolds*, this Court upheld a law criminalizing polygamy reasoning that a law may not interfere with belief and opinion but may with practice. Otherwise, it would "permit every citizen to become a law unto himself." *Reynolds* 166–67.

Subsequent decisions reiterated that religion does not excuse compliance with neutral laws of general applicability. *See United States v. Lee*, 455 U.S. at 263; *Minersville School Dist. v. Gobitis*, 310 U.S. 586, 595 (1940); *Bowen v. Roy*, 476 U.S. 693, 699 (1986).

This Court did not establish heightened scrutiny for free exercise claims until 1963. *See Sherbert v. Verner*, 374 U.S. 398, 403 (1963). However, following *Sherbert*, courts hesitated to apply strict scrutiny to free exercise challenges.[1] It burdened courts with weighing religious claimants' interests against government interests. *See, e.g.*, *Lyng v. Nw. Indian Cemetery*

[1] In the 1970s and 1980s, the federal appellate courts rejected 87 percent of free exercise challenges. *See* § 3:4. Development of the strict scrutiny standard, 1 Religious Organizations and the Law § 3:4 (2d). In cases where strict scrutiny was applied, as one scholar noted, it was "strict in theory but feeble in fact." *Id.*

Protective Ass'n, 485 U.S. 439, 451 (1988) (asserting that enforcing neural laws cannot depend on "measuring the effects of a governmental action on a religious objector's spiritual development"). Although technically subject to strict scrutiny, neutral laws of general applicability were upheld in practice. *See United States v. Lee* at 261; *Bowen v. Roy* at 712; *Jimmy Swaggart Ministries v. Bd. of Equalization of California*, 493 U.S. 378, 392 (1990) (upholding neutral and generally applicable laws). In the handful of cases where this Court faithfully applied strict scrutiny, it was in the narrow context of unemployment compensation, or hybrid rights. *See Smith*, 494 U.S. at 883, 881 ("in recent years we have abstained from applying the *Sherbert* test (outside the unemployment compensation field) at all").

The Fifteenth Circuit asserts that Congress and this Court have worked around *Smith*. R. at. 35–6. It is true that following the *Smith* decision, Congress passed the Religious Freedom Restoration Act ("RFRA") which statutorily codified strict scrutiny for even generally applicable laws. *See id.* But this Court declined to extend RFRA to state laws in *City of Boerne v. Flores*. *See City of Boerne*, 521 U.S. 507 (1997). It also upheld *Smith* as recent as 2021 in *Fulton*. *Fulton*, 141 S. Ct. at 1877.

Thus, *Smith* is not an outlier but firmly rooted in the history of free exercise rights and continues to direct courts. Overturning *Smith* now would be a departure from thirty-three years of precedent.

2. *Smith* is more workable than strict scrutiny since it avoids weighing religious practices against government interests, places religious and nonreligious conduct on equal grounds, and affords the right to free exercise great protection.

The Fifteenth Circuit asserts that *Smith* is unworkable. However, Respondent maintains that it is *Sherbert* that is unworkable, and that *Smith* offers an effective framework for free exercise challenges. This Court should uphold *Smith* for the following reasons:

1. Strict scrutiny requires courts to weigh religious claimants' interests against government interests, an uncomfortable task that leads to inconsistent outcomes. *See Lyng*, 485 U.S. 439 at 452 ("courts cannot reconcile [...] demands on government [...] rooted in sincere religious belief in so diverse a society"); *Smith*, 494 U.S. at 885 ("repeatedly and in many different contexts [this Court has] warned that courts must not presume to determine the place of a particular belief in a religion").

Take the *Smith* decision itself. In her concurrence, Justice O'Connor asserted that the state's interest in curbing drug use outweighed the Native American Church's interest in using peyote for religious purposes because peyote was a Schedule I controlled substance. *See Smith*, 494 U.S. at 905–6. The dissent concluded the opposite since peyote was essential to the Native American Church's long-standing rituals. *See Smith*, 494 U.S. at 919–21. The majority avoided balancing the Native American Church's interests against the state's by finding that the law at issue was neutral and generally applicable, and thus constitutional. *See Smith*, 494 U.S. at 890.

This Court in *Smith* recognized *Sherbert*'s unworkability, asserting that it contradicted "both constitutional tradition and common sense" to make compliance with valid laws dependent on one's religious belief "except where the State's interest is 'compelling.'" *Smith*, 494 U.S. at 885. Therefore, *Smith* draws a clearer line than strict scrutiny by requiring that a law first meet the threshold requirements of neutrality and general applicability. It also prevents courts from (albeit unintentionally) imbuing personal value judgments about a religious practice into their analysis.

2. Subjecting all free exercise challenges to strict scrutiny places religious conduct on higher grounds than nonreligious conduct. Whether or not overruling *Smith* would lead to a wave of religious exemptions or claims thereof (as *Smith*'s proponents fear), strict scrutiny allows

religious claimants to avoid compliance with neutral laws from which others cannot claim exemptions. The dissent in *Roman Catholic Diocese of Brooklyn v. Cuomo* asserted that laws may not treat secular conduct "more favorably" than religious. *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63, 80 (2020). The reverse is also true. "The first Amendment must apply to all citizens alike" and cannot give anyone "a veto" over valid laws. *See Lyng*, 485 U.S. 439 at 452.

3. Laws that are not neutral and generally applicable, and thus fail to satisfy *Smith*, are still subject to strict scrutiny. In this way, *Smith* serves as a filter for valid laws as distinguished from laws that suppress religion. Accordingly, free exercise challenges often prevail where a law targets religion. *See Lukumi*, 508 U.S. at 534; *Fulton*, 141 S. Ct. at 1878; *Masterpiece Cakeshop*, 138 S. Ct. at 1730–32.

4. Under *Smith*, the right to free exercise is still afforded great protection. As noted above, laws that fail *Smith*'s neutrality and general applicability requirements are subject to strict scrutiny, where free exercise challenges are more likely to prevail. Even where they fail, the political process still offers recourse. This Court noted in *Smith* that this was the case in several states where drug laws contained exceptions for religious peyote use. *See Smith*, 494 U.S. at 906. Further, *Smith* in no way altered the absolute right to hold religious opinions and beliefs. This Court explained at length that laws may not regulate or compel religious beliefs, punish the expression of religious beliefs, or impose "special disabilities" due to religious belief or status under the First Amendment. *Id.* at 877.

In summary, *Smith* provides a more workable framework than *Sherbert* because it strikes a balance between legitimate government interests, secular conduct, and the right to free exercise that strict scrutiny cannot. History demonstrates that *Sherbert* did not work for courts.

Yet the principles articulated in *Reynolds* continues to provide guidance. Nothing suggests this would not continue to be the case today if the Court overruled *Smith*.